



Comptroller General
of the United States

Washington, D.C. 20548

Lebowitz

Decision

Matter of: Laser Alignment Inc.

File: B-236906

Date: October 4, 1989

DIGEST

Protest that agency improperly failed to send a protester a solicitation is untimely when filed more than 10 working days after the closing date for receipt of offers which was originally published in the Commerce Business Daily and subsequently postponed 2 weeks by an amendment to the solicitation.

DECISION

Laser Alignment Inc. protests the award of contracts to AGL Corporation and to Spectra-Physics, under solicitation for offers (SFO) No. FCGS-89-Y2-03-B-5-18-89, a multiple award procurement, issued by the General Services Administration (GSA), for surveying equipment. Laser complains that it was improperly deprived of the opportunity to submit an offer because it did not receive a copy of the solicitation.

We dismiss the protest.

The SFO, issued by GSA on April 10, 1989, was synopsisized in the Commerce Business Daily (CBD) on March 27. The CBD notice stated that the closing date for receipt of offers would be May 11, although the initial solicitation was subsequently amended and provided a new closing date of May 30. GSA received three timely offers. On August 15, GSA awarded a contract to AGL Corporation and on September 8 it awarded a contract to Spectra-Physics. On September 12, Laser filed a protest with our Office in which it alleges that because it did not receive a copy of the solicitation from GSA, GSA unfairly excluded it from the competition.

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A CBD synopsis places prospective offerors on constructive notice of the solicitation and its contents. See Copperweld Southern Division, B-231853, Aug. 2, 1988, 88-2 CPD ¶ 111. Therefore, Laser, upon publication of the March synopsis, was charged with constructive notice of the solicitation's imminent issuance and the May closing date for receipt of offers. When Laser failed to receive a copy of the solicitation by the closing date for receipt of offers, the last day on which Laser could have successfully submitted an offer for the contract, it should have known of its basis for protest. Id. Under our Bid Protest Regulations, a protest concerning other than an apparent impropriety in a solicitation must be filed with the contracting agency or this Office within 10 working days after the protester knows or should have known the basis of its protest. 4 C.F.R. § 21.2(a)(2) (1989). Laser's September 12 protest to our Office, filed more than 3 months after the closing date, is untimely.

Even if we disregard the notice of the procurement in the CBD, Laser's protest is untimely. We note that following a meeting with the contracting officer on August 11, Laser filed an agency-level protest on August 30, complaining of its failure to receive a copy of the SFO.^{1/} Our Bid Protest Regulations provide that if a protest has been filed initially with the contracting agency, our Office will consider a subsequent protest filed with our Office if the initial protest to the agency was timely filed no later than 10 working days after the basis of protest is known. 4 C.F.R. § 21.2(a)(2), (a)(3). Here, even assuming that Laser first gained knowledge of its basis for protest on August 11, its agency-level protest was untimely because it was filed 13 working days later on August 30.

^{1/} The protester characterizes its meeting with the contracting officer on August 11 as an oral protest. However, an oral complaint to the contracting officer does not constitute a timely agency-level protest such that a subsequent protest to our Office would be timely since protests must be in writing. See Americover Co., B-234352, Mar. 28, 1989, 89-1 CPD ¶ 320. We point out that at this meeting, the contracting officer informed Laser that the solicitation was synopsized in the CBD and that the firm was included on the agency's mailing list.

Accordingly, Laser's protest to our Office is not timely because the initial agency-level protest was not timely filed.

The protest is dismissed.

Michael R. Golden

for

Ronald Berger
Associate General Counsel